

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

Omar Yanez,

Civil No. 06-2890 (PAM/SRN)

Petitioner,

v.

**ORDER**

State of Minnesota,

Respondent.

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This matter is before the Court on Petitioner Omar Yanez's Notice of Appeal, which the Clerk's Office construed as an Application for a Certificate of Appealability. Petitioner seeks appellate review of this Court's decision of October 17, 2007, denying the Petition for a Writ of Habeas Corpus.

Petitioner is required to secure a Certificate of Appealability prior to appealing the dismissal of his habeas corpus action. 28 U.S.C. § 2253(c)(1)(A); Fed. R. App. P. 22(b)(1). This Court cannot grant a Certificate of Appealability unless the prisoner "has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); see also Tiedeman v. Benson, 122 F.3d 518, 522 (8th Cir. 1997). "Good faith and lack of frivolousness, without more, do not serve as sufficient bases for issuance of a certificate." Kramer v. Kemna, 21 F.3d 305, 307 (8th Cir. 1994). Instead, the prisoner must satisfy a higher standard; he must show that the issues to be raised on appeal are "debatable among reasonable jurists," that different courts "could resolve the issues differently," or that the issues otherwise "deserve further proceedings." Flieger v. Delo, 16 F.3d 878, 882-83 (8th Cir. 1994) (citing Lozano v. Deeds, 498 U.S. 430, 432 (1991) (per curiam)); Cox v. Norris,

133 F.3d 565, 569 (8th Cir. 1997).

In this matter, Petitioner apparently did not realize that he was required to set forth the grounds for his appeal in requesting leave to appeal. Instead, Petitioner merely filed a notice of his intent to take an appeal. Because the issues presented by the Petition were not frivolous, Petitioner deserves an opportunity to raise those issues in a properly presented Application for Certificate of Appealability.

Accordingly, **IT IS HEREBY ORDERED** that:

1. Petitioner's Application for Certificate of Appealability (Docket No. 18) is **DENIED WITHOUT PREJUDICE**; and
2. Petitioner may file a new Application on or before December 21, 2007.

Dated: November 20, 2007

s/ Paul A. Magnuson  
Paul A. Magnuson  
United States District Court Judge